THE RECORD
OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

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Association Activities

THE SPECIAL Committee on a New Courthouse for the City and Municipal Courts, W. Mason Smith, Jr., Chairman, has reported that the Board of Estimate has now approved the contract which relates to the construction of the foundations, sinking of piles and steel work for the new courthouse. It was anticipated that work should actually have started on the site during November.

IN NOVEMBER the Special Committee on Military Justice, Abraham S. Robinson, Chairman, entertained at a forum the Judges of the United States Court of Military Appeals, Judge Homer Ferguson, Judge George W. Latimer and Judge Robert E. Quinn. The topic discussed at the forum was "A New Look at the Work of the Court of Military Appeals." Prior to the forum the Court held a special session for the purpose of admitting members of the Association to practice before the court.

A REPORT, which is in the nature of a supplement to the Committee's report of February 1955, on additional recommendations for revision of the Internal Revenue Code of 1954 was released

early in November by the Committee on Taxation, Charles C. MacLean, Jr., Chairman. Additional copies may be secured from the office of the Executive Secretary. The report has been distributed to Congress and to other interested officials.

THE FOLLOWING is from "The Talk of the Town" in *The New Yorker* for November 10, 1956:

> The other evening, outside the New York Bar Association Building, hard by our own restless haunt, a threesome of unsightly adolescents —complete with Elvis Presley hairdos and a getup based on some blurred impressions of the Wild West— were being manacled together by a couple of detectives, on the ground that they had just stolen a rather sharp-looking green coupé from Virginia. The detectives, who were obviously fans of "Dragnet," the monosyllabic show on TV, wore slouch hats and tan topcoats, and carried flashlights. They said nothing, and their captives said nothing. In the middle of all this a pair of elderly gentlemen emerged from the Bar Association Building.
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> "In my day, in these circumstances," said one of them, "those youths would have had more representation than you could conceivably get in Congress."
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> "As a matter of fact," said his companion, "I should like to take this on."
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> "With your arthritis?" said the first gentleman.
>
> "Ah, there we are," said the second.
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> As they walked into the night, we thought we heard the rusty clangor of an ambulance bell long since stilled.

THE COLUMBIA UNIVERSITY School of Law won the New York City regional rounds of the National Moot Court Competition. Arguing against Columbia was Brooklyn Law School. Other schools participating were Fordham University School of Law, New York Law School, New York University School of Law and St. John's University School of Law. The winner of the New York City regional rounds was awarded the Whitney North Seymour Award, a silver bowl. Last year's winner was the Brooklyn Law School. The winning team will be eligible to enter the final

rounds of the National Moot Court Competition in which some 18 schools will participate. The final rounds will be held at the House of the Association on December 19, 20 and 21. The case argued this year involves a petitioner who was convicted of murder in the first degree. He had based his defense on the grounds of insanity and raises on the appeal questions of wide public and professional interest relating to the existing tests of criminal responsibility.

Judges for the final round were Judge Frederick v.P. Bryan of the United States District Court for the Southern District of New York; Chief Justice Irving Ben Cooper of the Court of Special Sessions; Arnold Bauman, Chairman of the Committee on Criminal Courts, Law and Procedure; Thomas B. Gilchrist, Chief Assistant United States Attorney for the Southern District; and Myles J. Lane, former United States Attorney for the Southern District. The competition is sponsored by the Young Lawyers Committee, of which Peter S. Heller is the Chairman.

At its Ninth Conference in Dallas the Inter-American Bar Association changed its Constitution and By-laws to permit qualified individuals to become members of the Association. Previously only organizational and institutional members were permitted. Annual dues for individual members are: Juniors (five years of practice or less) $5.00; Seniors (more than five years of practice) $10.00; Associates (similar to Senior membership requirements) $25.00; and a Life membership of $500.00 or more. Applications for membership may be addressed to William Roy Vallance, Secretary General, 1129 Vermont Avenue, Washington 5, D.C.

At its organization meeting the Committee on Uniform State Laws, William Curtis Pierce, Chairman, discussed two new Uniform Acts adopted by the National Conference of Commissioners on Uniform State Laws at their meeting in Dallas. The first is the Uniform Gifts to Minors Act, and the second is the Uniform

Securities Act, which is designed to make uniform the "blue sky" laws of the various jurisdictions. Both of the new Acts will be assigned to Subcommittees for further study. The Chairman informed the meeting that the report of the Committee prepared last spring on the Uniform Motor Vehicle Certificate of Title Act had been approved by the Executive Committee and would be submitted to the State Legislature later this year.

SIR GODFREY RUSSELL VICK has been appointed to a County Court Judgeship in the London area. Sir Godfrey has been a guest of the Association on several occasions and is a former President of the Bar Council.

AT ITS October meeting, the Committee on International Law, John V. Duncan, Chairman, had as its guest Eric Windham White, Executive Secretary of the contracting parties of the Agreement on Tariffs and Trade. Prior to his present position Mr. Windham White held that of First Secretary of the British Embassy in Washington, and was formerly Secretary of the Havana Conference on Trade and Tariffs.

A NUMBER of the Sections of the Committee on Post-Admission Legal Education, Ernest A. Gross, Chairman, held meetings in November. "Current Policies and Procedures of the Antitrust Division" were discussed at a forum sponsored by the Section on Trade Regulation, John E. F. Wood, Chairman. Speakers were Victor R. Hansen, Assistant Attorney General of the United States; Robert A. Bicks, Legal Assistant to the Assistant Attorney General; and Ephraim Jacobs, Chief of the Legislation and Clearance Section.

The Section on Banking, Corporation and Business Law, Charles H. Willard, Chairman, held a lecture and panel discussion on "Prohibited Discounts Under the Banking and Gen-

eral Corporation Laws: The Impacts of *Miller* v. *Discount Factors, Inc.*" The discussion was led by Milton P. Kupfer, General Counsel to the National Commercial Finance Conference, Inc. and a member of the American Bar Association's Committee on Commercial Laws, and former Chairman of the Association's Committee on Bankruptcy and Corporate Reorganizations. Mr. Kupfer was assisted by a panel consisting of Homer Kripke and Otto Crouse. Joseph M. Sweeney, Associate Professor of Law, New York University School of Law and formerly with the Office of the Legal Adviser of the State Department, spoke before the Section on Jurisprudence and Comparative Law, of which Judge Samuel C. Coleman is Chairman, on "Methods of Training American Lawyers in the Civil Law." The Section on Wills, Trusts and Estates, Albert Mannheimer, Chairman, had as guest speaker George Craven, a member of the Philadelphia Bar, who discussed "Pitfalls in the Federal Law and Regulations as to Income Taxation of Trusts and Estates." Standish F. Medina reviewed the recent decisions in this field.

ALEXANDER LINDEY, Chairman of the Committee on Art, has announced the appointment of Subcommittees in charge of the Annual Photographic Show which opens on March 14 and the Annual Art Show which will open on May 1. For the Photographic Show, Joseph G. Blum will act as Chairman and the members of his Committee will be David Asch, William C. Cannon and Charles H. Meyer. For the Art Show, Daniel J. Riesner has been appointed Chairman and the members of his Committee are Edmund T. Delaney, Leffert Holz and Harris B. Steinberg.

IN OCTOBER 100 lawyers who reside in 31 states and territories of the United States issued a statement concerning "Recent Attacks Upon the Supreme Court of the United States." In issuing the statement George Wharton Pepper stated, "We who have

signed it are concerned with a matter of great national significance with respect to which we find occasion to speak out as lawyers. In the group are individuals who have, in the composite, borne important public responsibilities and exercised leadership in the work of the organized bar and in American legal education." The statement follows:

"As members of the bar we have been deeply disturbed by recent attacks on the Supreme Court of the United States. No institution of our government, including the judiciary, stands beyond the reach of criticism; but these attacks have been so reckless in their abuse, so heedless of the value of judicial review, and so dangerous in fomenting disrespect for our highest law that they deserve to be repudiated by the legal profession and by every thoughtful citizen.

"The Constitution is our supreme law. In many of its most important provisions it speaks in general terms, as is fitting in a document intended, as John Marshall declared, 'to endure for ages to come.' In cases of disagreement we have established the judiciary to interpret the Constitution for us. The Supreme Court is the embodiment of judicial power, and under its evolving interpretation of the great constitutional clauses—commerce among the States, due process of law, and equal protection of the laws, to name examples—we have achieved national unity, a nation-wide market for goods, and government under the guarantees of the Bill of Rights. To accuse the Court of usurping authority when it reviews legislative acts, or of exercising 'naked power' is to jeopardize the very institution of judicial review. To appeal for 'resistance' to decisions of the Court 'by any lawful means' is to utter a self-contradiction, whose ambiguity can only be calculated to promote disrespect for our fundamental law. The privilege of criticising a decision of the Supreme Court carries with it a corresponding obligation—a duty to recognize the decision as the supreme law of the land as long as it remains in force.

"There are ways of bringing about changes in constitutional law, but resistance is not such a way. Changes may be wrought by seeking an overruling decision, or by constitutional amendment.

It is through the amending process, and not by resistance, that the people and the States stand as the ultimate authority.

"The current wave of abuse was doubtless precipitated by the school segregation decisions, though it has by no means been limited to them. Since our position does not depend on agreement with those decisions, it is not our purpose to discuss their merits. As individuals we are entitled to our own views of their soundness. Some of us are definitely in disagreement with them. In an Appendix we have sought to put these decisions in historical perspective and our signatures to this declaration are intended to evidence our approval of the statements in the Appendix. Our present concern is for something more fundamental than any one decision or group of decisions; our concern is for the tradition of law-observance and respect for the judiciary, a tradition indispensable to the cherished independence of our judges and orderly progress under law.

"The American Bar has been alert to defend the judiciary against assaults which would undermine the Rule of Law, and to make plain to the American public the dangers lurking in such challenges. In 1937, when the Court was threatened, the Bar rallied to its support as an institution, regardless of individual dissatisfaction which many felt toward important decisions of that time. We must do no less today.

"The signers of this statement represent diverse political outlooks and geographic associations. We are all the more firmly united in our resolve to defend the Rule of Law against the present challenge."

Dillon Anderson, Houston; Ernest Angell, New York City; J. Garner Anthony, Honolulu; Philip W. Amram, Washington, D. C.; Howard L. Barkdull, Cleveland; Paul Bedford, Wilkes-Barre; Laird Bell, Chicago; Robert M. Benjamin, New York City; Charles L. Black, Austin; Frank T. Boesel, Milwaukee; George E. Brand, Detroit; Henry Brandis, Jr., Chapel Hill; James E. Brenner, Stanford; Joseph I. Brody, Des Moines; Bruce Bromley, New York City; John G. Buchanan, Pittsburgh; Howard F. Burns, Cleveland; Pierce Butler, St. Paul; Harold G. Cant, Minneapolis; Claude E. Chalfant, Hutchinson; Grenville Clark, Dublin; Herbert W. Clark, San Francisco; Charles A. Coolidge, Boston; Walter E. Craig, Phoenix; Homer D. Crotty, Los Angeles; Carl W. Cummins, St. Paul; Charles P. Curtis, Boston; Paul R.

Dean, Washington, D. C.; Robert Dechert, Philadelphia; Lloyd W. Dinkelspiel, San Francisco; James M. Douglas, St. Louis; Douglas L. Edmonds, Los Angeles; William D. Embree, Jr., Denver; Harold Evans, Philadelphia; Robert J. Farley, University; Jefferson B. Fordham, Philadelphia; Ray Forrester, New Orleans; Eugene H. Freedheim, Cleveland; Arthur J. Freund, St. Louis; Paul A. Freund, Cambridge; Fred E. Fuller, Toledo; Robert P. Goldman, Cincinnati; William T. Gossett, Dearborn; John Raeburn Green, St. Louis; Milton D. Green, St. Louis; Albert J. Harno, Urbana; James P. Hart, Austin; Paul M. Hebert, Baton Rouge; Allan A. Herrick, Des Moines; Charles A. Horsky, Washington, D. C.; Charles B. Howard, Minneapolis; William S. Jackson, Colorado Springs; Charles W. Joiner, Ann Arbor; William J. Kenealy, New Orleans; Allen T. Klots, New York City; Barton H. Kuhns, Omaha; Mason Ladd, Iowa City; Jacob M. Lashly, St. Louis; Monte M. Lemann, New Orleans; William B. Lockhart, Minneapolis; Alan Loth, Fort Dodge; Thomas D. McBride, Philadelphia; William L. Marbury, Baltimore; Jesse E. Marshall, Sioux City; Theodore R. Meyer, San Francisco; Arthur S. Miller, Emory University; Frederic M. Miller, Des Moines; James R. Morford, Wilmington; Edmund M. Morgan, Nashville; Charles E. Nieman, Minneapolis; Arthur L. Newman, New York City; John Lord O'Brian, Washington, D. C.; A. E. Papale, New Orleans; Benjamin M. Parker, Atlanta; George Wharton Pepper, Philadelphia; Maynard E. Pirsig, Minneapolis; John Carlisle Pryor, Burlington; Frank J. Remington, Madison; Alvin J. Rockwell, San Francisco; James Grafton Rogers, Georgetown; Eugene V. Rostow, New Haven; Murray Seasongood, Cincinnati; Ethan A. H. Shepley, St. Louis; Joseph H. Stamler, Newark; E. Blythe Stason, Ann Arbor; Charles M. Storey, Boston; Robert G. Storey, Dallas; George W. Stumberg, Austin; Frank J. Sulloway, Concord; Benjamin F. Swisher, Waterloo; Charles P. Taft, Cincinnati; Henry J. Te Paske, Orange City; Harrison Tweed, New York City; Robert W. Upton, Concord; George S. Van Schaick, Binghamton; Robinson Verrill, Portland; Leon H. Wallace, Bloomington; Olin E. Watts, Jacksonville; Bethuel M. Webster, New York City; Roy E. Willy, Sioux Falls; Francis E. Winslow, Rocky Mount; Julius J. Wuerthner, Great Falls; G. Aaron Youngquist, Minneapolis.

Supplementary List:

Ralph S. Brown, Jr., New Haven; Daniel J. Dykstra, Salt Lake City; Morris L. Ernst, New York City; William M. Hepburn, Emory University; Palmer Hutcheson, Houston; Cloyd Laporte, New York City; Maurice H. Merrill, Norman; Whitney North Seymour, New York City; Sidney F. Strongin, Brooklyn; William C. Warren, New York City.

The Calendar of the Association
December and January

(As of November 21, 1956)

December 3	Dinner Meeting of Committee on Federal Legislation Dinner Meeting of Committee on Professional Ethics Meeting of Committee on State Legislation
December 4	Meeting of Art Committee Meeting of Committee on Bill of Rights Dinner Meeting of Committee on International Law Meeting of Section on Labor Law Meeting of Section on Wills, Trusts and Estates
December 5	Dinner Meeting of Executive Committee
December 6	Dinner Meeting of Committee on Admiralty Dinner Meeting of Committee on Taxation
December 11	*Stated Meeting of Association, 8:00 P.M., Buffet Supper, 6:15 P.M.*
December 12	Dinner Meeting of Committee on Bill of Rights Dinner Meeting of Committee to Study Defender Systems
December 13	*Lecture on "Hungary and Suez—Problems in World Order," 8:00 P.M. Speaker—H. E. Sir Leslie Knox Munro, K.C.M.G., Ambassador Extraordinary and Plenipotentiary Permanent Representative to the United Nations from New Zealand. Buffet Supper, 6:15 P.M.*
December 14	Meeting of Committee on Anti-Trust Laws and Foreign Trade
December 17	Dinner Meeting of Library Committee
December 18	Meeting of Committee on Admissions Meeting of Committee on Arbitration Dinner Meeting of Committee on Courts of Superior Jurisdiction Dinner Meeting of Committee on Domestic Relations Court Dinner Meeting of Committee on Copyright
December 19	National Moot Court Competition. Sponsorship Young Lawyers Committee

December	20	National Moot Court Competition. Sponsorship Young Lawyers Committee
December	21	National Moot Court Competition. Sponsorship Young Lawyers Committee
January	2	Dinner Meeting of Executive Committee Meeting of Section on Wills, Trusts and Estates
January	3	Dinner Meeting of Committee on International Law
January	4	*Annual Twelfth Night Party.* Sponsorship Entertainment Committee
January	7	Dinner Meeting of Committee on Federal Legislation Dinner Meeting of Committee on Medical Jurisprudence Dinner Meeting of Committee on Professional Ethics
January	8	Meeting of Committee on Domestic Relations Court Dinner Meeting of Committee on Insurance Law Meeting of Section on Jurisprudence and Comparative Law
January	9	Meeting of Section on Banking, Corporation and Business Law Dinner Meeting of Committee on Bill of Rights
January	10	Meeting of Medical Jurisprudence Subcommittee on Interprofessional Conduct for Legal and Medical Professions
January	14	Joint Meeting of Section on Administrative Law and Procedure with Section on Corporate Law Departments
January	15	*Stated Meeting of Association, 8:00 P.M., Buffet Supper, 6:15 P.M.*
January	16	Meeting of Committee on Admissions Dinner Meeting of Committee on Courts of Superior Jurisdiction Meeting of Section on Litigation
January	17	Meeting of Committee on Arbitration
January	21	Meeting of Library Committee Dinner Meeting of Committee on Copyright
January	22	Meeting of Committee on State Legislation

January	23	Meeting of New York State Bar Association Section on Food, Drug and Cosmetic Law
January	24	Meeting of New York State Bar Association Section on Antitrust Law
January	25	Annual Meeting of New York State Bar Association
January	26	Annual Meeting of New York State Bar Association
January	28	Dinner Meeting of Committee to Cooperate with International Commission of Jurists
January	29	Meeting of House Committee Meeting of Section on Labor Law Meeting of Committee on State Legislation
January	30	Dinner Meeting of Committee on Legal Aid

The President's Letter

To the members of the Association:

From time to time I shall utilize this means of seeking advice and suggestions from the membership with regard to problems that concern me. Such a problem devolves from the requirements of Article VII of the Association's Constitution calling for Stated Meetings to be held on "the third Tuesday of January and October and on the second Tuesday of March and December in each year" in addition to the annual meeting to be held on the second Tuesday of May. Thus we are required to hold five such meetings between October and May each year.

The October meeting is well occupied with the subject of the judicial candidates to be voted upon at the November popular election. The May annual meeting is of course essential. But what of the other three meetings? How can they be made more interesting and alluring? So much of the work of the Association is carried on by Committees, so many members give such substantial time and effort to committee assignments, and so many members have so many things to do in the evening that perhaps they should not be expected to attend Stated Meetings unless they can be stimulated or at least called to act on something of substantial importance to the Association, the profession or the community. The plain fact is that great difficulty arises in efforts to think up an agenda for many of these Stated Meetings and often they are comparatively sparsely attended and not very exciting or amusing or constructive. Should the Constitution be amended to reduce the number of required Stated Meetings or make the holding of some of them discretionary rather than mandatory? How can they be improved?

The suggestions and reactions of the members would be most welcome. I have no desire to interfere in the slightest degree with the democratic process, nor to act hastily. But I shall appreciate your advice and guidance.

LOUIS M. LOEB

November 7, 1956

The Federal Loyalty-Security Program

By Dudley B. Bonsal

On July 9th last a special committee of our Bar Association published its Report on the Federal Loyalty-Security Program. It is a tribute to that Report that the Chairman of the Committee on Post-Admission Legal Education invited me to come here tonight to tell you about it.

Twenty years ago we were fortunate to have no personnel security systems of general application in the United States. Today there are Federal personnel security programs which cover nearly six million civilian employees of government and industry, to say nothing of the military security program and numerous State security programs which have developed through the years.

While I imagine that comparatively few of us have been directly exposed to the Federal Loyalty-Security Program, either as principal or attorney, I am sure that all of us have read and thought a great deal about the program and its implications. Now, how did it happen that in such a short span of years we were faced with the necessity of so carefully scrutinizing those of our fellow citizens who work for our Federal Government? Well, it was only a little over ten years ago that our country was engaged in a life and death struggle against the Axis powers. Russia was our ally, and obvious military strategy dictated that we aid the Russians. The singleness of purpose with which we fought World War II contributed much to our victory. I recall seeing a sign in the office of a high Government official which stated, "We are

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Editor's Note: Mr. Bonsal is the Chairman of the Association's Special Committee on the Federal Loyalty-Security Program and Chairman of the Executive Committee of the Association. In July, 1956, Mr. Bonsal's Committee published a definitive study of the Federal program. Copies of the Report may be ordered from Dodd Mead & Company ($5.00). The lecture published here was delivered by Mr. Bonsal at the House of the Association on October 23, 1956, under the auspices of the Committee on Post-Admission Legal Education.

fighting the enemy—not each other." We took a leaf from the Sermon on the Mount—

> "Take therefore no thought for the morrow; for the morrow shall take thought for the things of itself. Sufficient unto the day is the evil thereof."

It followed, it seems to me, that during the War days we were at least indifferent if not tolerant to the dangers of the Communist conspiracy, and so we were totally unprepared when, hostilities having barely ceased, it was revealed that Russia had been an ally in name only. The Communist conspiracy having disposed of three of its principal enemies—thanks to the effort of the Western Allies—could now extend its tentacles into the bosoms of its former friends.

Once the Communist conspiracy was unmasked, the United States lost no time in taking steps to meet it. You will recall the Marshall Plan and the many efforts which we made to keep the free world afloat. Unfortunately, despite these efforts, China was lost to the Communists. We also took steps to protect ourselves from Communist infiltration. We discovered that certain persons in important positions in our Government had been either Communists or Communist sympathizers and that some secret Government information had probably leaked to Russia.

It was natural that this came as a great shock to the American people. It is greatly to be regretted, however, that this shock was seized upon by some for political purposes. The result was that from the perhaps indifferent attitude which prevailed during the War, we swung to the other extreme and began to look for Communists in every corner of our Federal establishment. We thought our peril so great that a charwoman in the least sensitive Federal agency was deemed as dangerous as a cabinet officer. From the stage of indifference we moved through a stage of hysteria. Fortunately, that too has passed. We began to study the Communist conspiracy and learn how it operates. We also began to think more about the real elements of national security. Finally, we again recognized that the pillar of any Federal Loyalty-Security

Program must be fair play to the employees themselves. These are subjects which I believe we can at last, and properly, consider non-partisan because they call for joint effort and constant vigilance of both political parties acting in the interests of the United States. It cannot be assumed by either party that it has all the answers or that it is more dedicated to the goals sought than is the other.

This is why Mr. Allen Klots, who was President of this Association at the time, believed that the organized Bar could make a contribution to the thinking of the Congress and of the officers of the Executive Branch who have the Federal Loyalty-Security Program in their charge. As he stated on December 22, 1955:

> "In the judgment of the Association there is serious need for a non-partisan and independent review of present programs. Federal loyalty and security procedures now directly affect many millions of Americans in government service and in private employment in defense industries or industries which may in the future become defense contractors.
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> "The operation of these programs has been widely criticized. It is argued that they do not yet provide adequate protection to the national security. It is also argued that they work needless hardship and injustice upon individuals, that they have led to a deterioration of morale and that they have increased the difficulty of recruiting competent persons for public service.
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> "The American Association for the Advancement of Science has recently called for a revision of the security system. The participants in the conference on the Federal Government service held by the American Assembly recommended changes in the administration of the security programs and called for a commission of outstanding citizens' to review the problem. There have been many other expressions of a serious concern with these issues, but the facts are not clear and there is little agreement as to what changes may be desirable.

"These considerations have led the Association to conclude that an important service can be rendered by the establishment of a committee competent to review all aspects of this question and to arrive at specific conclusions which will carry weight in public discussion."

Our Association's study of the Federal Loyalty-Security Program was made possible by a grant from the Fund for the Republic. This was the latest of a number of grants which our Association has received from various foundations for the purpose of making studies deemed useful by both the granting foundation and our Association. In accepting these grants, our Association does so with the understanding that our study and report will be completely independent. Thus it was with the grant from The Fund for the Republic and, as we said in the preface to our Report, no official or representative of the Fund in any way sought to suggest or advise our Association as to the appointments to be made on the Special Committee, nor did the Fund in any way interfere with the choice of our research staff or seek to influence our findings and conclusions.

As President of our Association, Mr. Klots appointed a Special Committee of nine members to undertake the study. The Association has a special class of members composed of lawyers who practice outside of New York. This enables lawyers in other communities to contribute to our work and to use our facilities should they happen to be in New York. In view of the national character of the subject matter, Mr. Klots wisely decided to appoint to our Special Committee four outstanding lawyers residing in other parts of the country. John O'Melveny of Los Angeles, Monte Lemann of New Orleans, Richard Bentley of Chicago, and Frederick Bradley of Washington. The other five members of our Special Committee, all from New York, were Whitney North Seymour, former President of the Association, Harold M. Kennedy, former United States District Judge for the Eastern District of New York, Henry J. Friendly, George Roberts, and myself.

Our Committee was fortunate to enlist the services of Professor Elliott E. Cheatham of Columbia Law School as our Staff

Director. Professor Cheatham's well known distinguished scholarship and his great sense of fairness were indispensable to the successful completion of our task. He was ably assisted by Professor Jerre Williams of the University of Texas Law School. To complete our staff, we obtained the services of two fine young attorneys—John Carey, formerly of the Philadelphia Bar and now practicing law in New York, and John Miller of the New York and New Jersey Bars.

Now, what do we mean by the term "Federal Loyalty-Security Program"? It embraces a number of personnel security programs. One is the program for Federal civilian employees under Executive Order 10450, which is applicable to 2,300,000 Federal employees. Another is the Industrial Security Program of the Department of Defense, which covers nearly 3,000,000 persons who, as employees of contractors with the military departments, have access to classified information. A third is the program of the Atomic Energy Commission, which extends both to its own employees and to its contractors' employees who have access to classified information. It is estimated that the Atomic Energy Commission's program extends to some 80,000 persons. Then there is the Port Security Program which applies to about 800,000 seamen and longshoremen. Finally, there is the International Organization Employees' program which extends to over 3,000 Americans in the employ of International Organizations. These programs together extend to some 6,000,000 Americans. There are of course military security programs, but I will not go into them as they were not included in the scope of our study.

All these programs operate under standards and criteria which are detailed in the governing regulations. The standard most widely used is that the employee's retention in employment or his continued access to classified information is "clearly consistent with the interests of the national security." More detailed criteria used under the programs aid in the application of the standard.

The procedures under the several programs, though differing widely in detail, fall into the following five stages:

1. Investigation to ascertain whether there is adverse security information about the employee;

2. Screening to consider whether the information is substantial enough to call for the filing of security charges;

3. Hearing to determine whether the employee meets the security standard;

4. Appeal or review, in some agencies only;

5. Final decision by the head of the agency.

Now, how do the programs operate? Let's take an example under Executive Order 10450. Picture yourself as a Federal employee sitting at your desk in Washington contentedly passing papers to somebody else's desk when a piece of derogatory information about you reaches the desk of the security officer in your agency. The process by which this derogatory information comes to the security officer is the first stage of the proceeding known as investigation. It may come from the F.B.I., or the Civil Service Commission, or as a result of the security officer's own efforts, or may have reached him unsolicited. The derogatory information may raise a question as to your loyalty, such as, you are or were a member of the Communist party, or you are or were a member of the Bureaucrats Benevolent Association, a Communist dominated organization on the Attorney General's list; or it may raise a question as to your reliability because of your relationship to someone else, such as—your wife is a Communist and you have a sympathetic relationship with her, or your mother is living behind the Iron Curtain and you have a sympathetic relationship with her; or the information may indicate that you might be subject to blackmail because of some serious character defect or because of some unfortunate incident in your past that you have been hiding through the years. The derogatory information will range from the serious to the trivial, down to such things as a report from a fellow employee that he heard you say at the drinking fountain, "What?—No holiday on Columbus Day? This *is* a lousy Government."

Having received the derogatory information, your agency may decide, if loyalty is not involved, to employ ordinary Civil Service procedures. However, let's assume that the agency decides to proceed under its loyalty-security program. The security officer will

then proceed with the evaluation of the derogatory information. This is the second stage, somewhat analogous to a grand jury proceeding, and is known as screening. Formerly, the security officer used to do the screening with the aid of only his staff, but more recently he is apt to consult someone high up in the agency and also the general counsel. Sometimes the screening is done by a screening board. At this stage you may be called in for an informal interview to explain the derogatory information, a practice that our committee recommends should be followed in all cases. If, as a result of the screening, the derogatory information is found insubstantial, that is the end of it. However, if the screening authorities think the information is serious, they will prepare a statement of charges. You will be called in and be presented with a statement of charges and given an opportunity to reply and an opportunity to have a hearing before a hearing board. You will also be told—and this may well hurt you the most—that the agency feels compelled to suspend you from your position immediately, suspending as well your compensation until the proceedings are concluded. Then you will be in the unhappy position of having to continue to support the wife and children and, at the same time, of preparing your defense. You should, of course, retain a lawyer, but because of financial stringency, you may decide you can't afford it.

In due course, anywhere from three weeks to six months thereafter, you will put in your answer and appear at the hearing before the hearing board. You will be entitled to counsel, of course, and usually the board and the agency counsel and security officer will be as helpful as they can. You can bring in as many witnesses as you want, but you will have to pay for their transportation to the hearing unless they are willing to pay for it themselves. You can also produce affidavits or anything else that you think is helpful to you. In most cases, the Government will not put in any witnesses but will rely on its report containing the derogatory information which is in the hands of the hearing board. If the Government should put on any witnesses, you can cross-examine them, and of course the Government can cross-examine your witnesses.

Following the hearing, the hearing board will report either that your continued employment is clearly consistent or is not clearly consistent with the interests of national security. In the Department of Defense, you may appeal to another board but usually the report will go from the hearing board direct to the agency head and you or your attorney can file a statement with the agency head if you want to. The report of the hearing board is not in any way an adjudication, but is a recommendation to the agency head, who may follow it or not, as he determines. Anywhere from one month to eight months later the agency head will make his final determination. If the agency head finds that your continued employment is consistent with the interests of national security, you will be restored to duty with back pay if you have been suspended. If he finds that your continued employment is not clearly consistent with the interests of national security, you will be out looking for another job.

Our Special Committee divided its work into three phases. The first was a detailed study of the programs I have outlined. This study covered not only the statutes, executive orders and regulations, but the voluminous and useful reports of the various congressional committees which have dealt with the subject. Among these was the report of the so-called Humphrey Committee which led to the establishment of the Commission on Government Security. The Commission is now in the process of making a study of the whole area of internal security. The Chairman of the Commission on Government Security, Mr. Loyd Wright, is a former President of the American Bar Association.

We also studied the limited material available on actual cases. This material is limited because, for security reasons, the Government has not felt able to disclose much in the way of specific cases. However, we were aided by a collection of cases collected by Mr. Adam Yarmolinsky from attorneys for employees under the programs. While this material was necessarily incomplete and given from the point of view of the attorney for the employee, it was helpful to us in highlighting and making concrete some of the problems which arise in connection with the present programs.

The Department of Defense published only a week or so ago its first annual report on the Industrial Personnel Security Review Program, which described some 30 cases, of course without identification, as seen from the Government's point of view. This whole report including the collection of cases will be of great value in public consideration of that Program, and constitutes a very real contribution by Mr. Jerome D. Fenton who is the Director of the Office of Personnel Security Policy in the Department of Defense.

Once we had collected all the material we could find, we moved to the second phase, which was to interview as many people as we could who we thought could contribute to our study. We did not hold formal hearings—our interviews were informal and off-the-record. This enabled us to talk to or obtain views from over 150 people, including Government officials in charge of various of the programs, who, from the Attorney General down, gave us generously of their time. Our interviews also included counsel and staff members of congressional committees, business and labor, professors, scientists, lawyers with experience in security cases and informed and thoughtful supporters and critics of the program.

The third and final phase of our work was the preparation of our Report and the writing of our conclusions and recommendations. This of course was the heart, as well as the hardest part, of our task. Every member of the Committee worked over and considered every part of our Report. Every member of the Committee took part in the lengthy discussions which led to the adoption of our various conclusions and recommendations. I think it was because of this, rather than in spite of it, that we came out with a unanimous Report.

Our Report reveals the process of reasoning we followed in arriving at our conclusions. We begin with a chapter on liberty and security. We refer to the cold war and point out that the battlefield is the world and encompasses every field of human endeavor, whether spiritual or material. Our nation is the leader of the free world in this war, and its greatest weapon is the moral values for

which it stands and towards which free peoples everywhere have long been striving. To continue to be a leader in this war our nation must defend itself against concealed as well as open attack. It can and will do so and, at the same time, continue to hold high the truths on which our country is founded. There is no irreconcilable conflict between liberty on the one side and national security on the other. Both liberty and security must be maintained for the triumph of our cause in the world.

We then discussed the Communist threat, referring to the enormous expansion of Communism since 1939, during which period Communist rule has been extended to some 600,000,000 people. We also discussed the methods pursued by the Communist conspiracy to infiltrate and destroy its enemies under the cloak of democracy, anti-colonialism and peace. We pointed out that the Federal Loyalty-Security Program is only one of the means which our country uses to defend itself against Communism. There are of course many others, and each must be considered in relation to the others so that all the means are used to the greatest effect, and of course the greatest weapon of all is the freedom of our people, which must be preserved at all costs. Our Government must be careful not to emulate the Communists in internal conformity. It could never succeed, and any attempt to do so could only lead to the loss of our cause and the destruction of our freedoms.

It was against this backdrop that we measured the existing Federal Loyalty-Security Program. We agreed that the system should be continued to help counter the Communist threat, but that it should be modified in important respects. In so doing, we did not criticize the able men in both the Democratic and Republican administrations whose task, often thankless, it has been to protect our Government from Communist infiltration. We felt that the Communist danger to our Government might continue for a long time and that it was time to formulate a long-term program to meet it. Our recommendations were made to this end and, as we said, our Report is one chapter in a continuing story. It is appropriate that our Congress, the organized Bar, and the people of the United States should have continuing interest in the

evolution of the program, just as they have a vital interest in continuing our leadership in the free world.

We took into account other internal security measures such as existing statutes which bar Communists from all Government positions. With all these considerations in mind, our Committee found weaknesses in four aspects of the Program:

1. There is a lack of coordination and supervision of the various personnel security programs.

2. The scope of the personnel security programs is too broad in that positions are covered which have no substantial relationship to national security.

3. The standards and criteria do not sufficiently recognize the variety of elements to be considered, including the positive contribution which an employee may make to national security, and they do not permit readily a common sense judgment on the whole record.

4. The security procedures fail in various ways to protect as they could the interests of the Government and of employees.

To meet these weaknesses our first recommendation provides for the office of a Director of Personnel and Information Security who would be responsible to the President and who would have primary responsibility to conduct a continuous review of and supervision over our personnel security programs and the procedures for the classification of information. While some of the existing programs, such as the Industrial Security Program of the Department of Defense, the Port Security Program and the AEC Program are already largely centralized, the procedures under Executive Order 10450 are handled by some 70-odd Executive departments and agencies, many with their own regulations and procedures. The lack of centralized supervision and review over the many programs has already been felt in the Government itself, and a number of committees have been set up to try to meet the problem. However, in our view, the creation of the office of Director of Personnel and Information Security would be the most effective method of assuring the central supervision which is needed. Our reason for including among the functions of the Director supervision over the classification of information is to

prevent, insofar as possible, the needless classification of information as secret and top secret or the continuance of such classification after the need no longer exists. Classification of information bears directly on the Personnel Programs because it defines areas which are deemed to be of importance to the national security.

Our second recommendation had to do with the scope of personnel security programs, and this recommendation received more public attention than any of the others. We recommend that the scope of the programs be confined to sensitive positions and accordingly that the Port Security Program and the International Employees Program be abolished since they do not involve sensitive employment. We arrived at the same conclusion for different reasons as did the Supreme Court in *Cole* v. *Young*, decided June 11th at a time when our Report had already gone to the publishers. Our conclusion was based on our belief that the covering of non-sensitive positions is not necessary in the interests of national security. Moreover, we felt that in reducing the scope of the program to sensitive positions, we would have a more efficient program and we would do a better job in keeping out the Communists and their fellow travelers from positions where they could affect our national security. We were also mindful of the penal statutes which make it unlawful for Communists to hold any Government position and which provide substantial punishment if they do. We defined sensitive positions as positions, the occupant of which would have access to information classified as "secret" or "top secret" in the interests of national security, or which have a policymaking function having substantial relation to national security. Here one point should be stressed: When we say "access to classified information" we mean unauthorized access as well as authorized, so we concluded that the position of a secretary or a janitor who had opportunity for unauthorized access to the files of the Joint Chiefs of Staff should be considered a sensitive position.

Most of the adverse criticism of our Report has been directed to this recommendation to limit the scope to sensitive positions. Yet, we reached unanimous agreement very early in our study that the

programs should be so limited. We estimate that our recommendation, if adopted, would reduce the scope of the programs from approximately 6,000,000 persons now covered to less than 1,500,000.

One criticism of our recommendation has been that no one who is not a loyal American should be entitled to a Government job, no matter how non-sensitive. However, this does not require the full panoply of the Federal Loyalty-Security Program in non-sensitive areas as there are statutes which make it a penal offense for such persons of obtain Government employment. Trust in our people, not suspicion of them, is the keystone of our democracy.

Another criticism found in some segments of the press is that our recommendation would enable Communists and fellow travelers to honeycomb our Government establishment. This just is not realistic. Mr. J. Edgar Hoover, the greatest authority on the subject, estimated earlier this year that there are some 22,200 hard-core Communists in the United States. Making the liberal assumption that each of these Communists is able to enlist 10 fellow travelers gives you a total of some 250,000 people. Can it be assumed that these 250,000 people have the inclination, ability and nerve to honeycomb our Federal establishment of over 2,300,000 employees? Of course not. I think it is fair to say that the great preponderance of employees removed under the Federal Loyalty-Security Program are loyal citizens, and neither Communists nor fellow travelers. However, because of some defect of character, they may unwittingly or by blackmail be used as tools of the Communists. This danger, it seems to us, is extremely remote in non-sensitive positions.

Our next recommendation would provide a new personnel security standard to take the place of the one presently used, which, as you know, provides that the employment or retention in employment must be "clearly consistent with the interests of national security." Our own suggestion is:

> "The personnel security standard shall be whether or not in the interest of the United States the employment or

> retention in employment of the individual is advisable. In applying this standard, a balanced judgment shall be reached after giving due weight to all the evidence both derogatory and favorable, to the nature of the position, and to the value of the individual to the public service."

The standard which we propose, and which of course would be limited to sensitive positions, would rest on a common sense judgment as to whether it is or is not advisable to grant clearance. Under our proposed standard, the individual's positive contribution to the interests of the national security would be considered, and it would require that the whole range of factors bearing on the wisdom of granting or refusing clearance, and no one factor alone, should be taken into account.

The term "guilt by association" has been bandied about a good deal, but we recommend that an employee's associations must necessarily be considered in determining his suitability for a sensitive position. We take people's associations into account as a matter of course in determining suitability for employment. The Government should not be required to do otherwise when security trustworthiness is involved. However, we do recommend that a conclusion against an employee's security suitability on the ground of his associations should not be reached without adequate basis for determining that he shares, is susceptible to, or is influenced by such associations.

We next dealt with the Attorney General's list of some 300 organizations. The list makes no distinction between Communist groups, Communist front organizations, Communist infiltrated organizations and other organizations which, though innocent in origin, may have been taken over and used for a time by the Communists and, with few exceptions, it gives no indication of the period or the nature of the Communist domination.

The list was originally compiled with no opportunity for a hearing by the organization listed. While this has been corrected as to certain organizations added in recent years, nothing has been done about the earlier ones.

Finally, the list includes many organizations which have been defunct for years. It is not kept up to date by removing the defunct organizations or by listing new subversive organizations.

The effect of the publication of the existing list has caused considerable unfairness, particularly as it has been used by many groups, both governmental and private, to test the loyalty of individuals. This has been due to the fact that the list is public and bears the imprimatur of the highest law officer of the Government.

Therefore, it is our recommendation that the Attorney General's list should be abolished unless it can be modified to meet the various deficiencies which I have described. However, its abolition would not affect the effective operation of the Federal Loyalty-Security Programs, as we recommended that the Department of Justice should continue to make available to security personnel and boards relevant information in its files concerning all organizations, whether defunct or not, the character of which may be pertinent in a pending inquiry.

Our next recommendation has to do with security personnel. While most of the Government personnel engaged in security matters are conscientious and able people, we feel that training courses for security personnel are needed so that they will be acquainted with basic constitutional and legal principles, the relative reliability of various kinds of evidence, as well as the nature of Communism and the techniques employed by the Communists in the United States. To accomplish this, we recommend that the Director of Personnel and Information Security establish training courses for security personnel. In this way, we believe that the security of the United States will be better served and at the same time maximum due process will be accorded to the employees.

Our remaining recommendations have to do with various procedural reforms in the administration of the programs. Time does not permit me to go into all of these recommendations in detail, but I will try to touch on some of them. Please bear in mind again that we envisage a program limited to sensitive positions.

We propose a central screening board instead of the present system of screening by the agencies so as to obtain a more concentrated experience and to bring about, we hope, a reduction in the issuing of needless charges which are later dismissed, but only after considerable hardship and unhappiness to the individual charged. We would also improve the existing screening procedure and would afford employees an opportunity of an informal conference with the central screening board or its representative to answer derogatory information.

We recommend that every employee be entitled to have an attorney represent him throughout the proceedings before the screening boards and hearing boards, and that every employee ultimately cleared shall be reimbursed for reasonable attorneys' fees, and we hope that Bar Associations will provide attorneys for employees where needed. Moreover, we urge that any employee who is suspended upon the filing of charges shall continue to receive his salary until the conclusion of the proceedings and that, wherever possible, an employee should be transferred to a nonsensitive position at the same pay instead of being suspended. We also make rather specific recommendations as to the composition of screening boards and hearing boards and the manner in which they shall conduct their proceedings.

Perhaps the most important of our procedural recommendations has to do with the appearance of witnesses and confrontation. Here, indeed, we are venturing into an area around which revolves much of the criticism that has been directed at the present programs. Our first proposal is to authorize screening boards and hearing boards to subpoena witnesses, both for the Government and for the employee. We would confer discretion on the boards to prevent abuses of the subpoena power.

Now, as to the so-called informants, we recommend that all witnesses be made available at hearings for cross examination unless the disclosure of the identity of the witness, or requiring him to submit to cross examination, would be injurious to national security. We would protect the Government against disclosure of regularly employed undercover agents whose identity has not

been publicly disclosed by enabling the head of his department to certify that his identification or presence at a hearing would be detrimental to the interests of national security. However, we propose that such certificate should be accompanied by data which would aid the board in evaluating the evidence given by the undercover agent, including a statement as to whether he obtained the information at first hand or through hearsay. All other witnesses, including the casual informant, would be produced at the hearings unless the screening board or the hearing board, as the case may be, should determine that it would be inconsistent with the requirements of national security to do so. In all cases (consistent with national security) a hearing board should make available to the employee the substance of all evidence which it takes into consideration which was given by a witness whom the employee has not had an opportunity to cross examine. Finally, we would recommend that all screening boards and hearing boards must take into account in weighing the evidence any lack of opportunity for confrontation and cross examination.

Many thinking people have criticized this recommendation because it does not require confrontation in all cases, and I think we would all agree, as lawyers, that the right to face one's accusers is a fundamental principle of every free society. It is equally true that while a man's liberty is not at stake in these proceedings, his reputation and good name may well be. Sometimes this can be more important to a man than the deprivation of his liberty. However, we are faced with an extraordinary menace from the Communist conspiracy. Our chief weapon against this menace has been and will presumably continue to be counter-espionage, involving as it does the use of anonymous informants. Everyone whom I have talked to, not only in this country but abroad, who has had anything to do with counter-espionage has said that the anonymity of the informant is essential. Without it, they say, counter-espionage ceases to be a weapon and, in fact, may become a tool of the enemy.

Many of you will have seen a most interesting article by Mr. Justice Hofstadter in the October 4th Law Journal entitled "Con-

frontation in the Loyalty-Security Program." Justice Hofstadter suggests that confrontation be afforded in all cases, but not confrontation by the employee or his counsel. He suggests a public advocate, having requisite security clearance, to act as the alter ego of the employee for the purpose of confrontation and cross examination of an undercover agent. This is an interesting new thought, and I commend it to you for your consideration. It is another way of trying to meet this vexing problem, but of course, like our Committee's recommendation, does not give full effect to the principle of confrontation. I hope that the Commission on Government Security will cast further light on this difficult subject.

I am afraid that while I have already taken up too much of your time, I have not really done justice to the subject. However, you would not be here unless you agreed with our Committee that it is a subject which should be of great concern to every thinking lawyer. I hope that, if you have not already done so, you will take the time to read our Committee Report, which is published by Dodd, Mead. If you want to keep up to date on the programs, there is an excellent loose-leaf service "Government Security and Loyalty" published by the Bureau of National Affairs.

After the returns come in on November 6th, we will again witness that remarkable phenomenon of American politics. We will again close ranks to meet together the great issues which lie before us. We are confident that the Commission on Government Security will make a constructive appraisal and recommendations on the Federal Loyalty-Security Program. We are equally confident that our political leaders will join together in bringing about needed reforms in that program. We commend our recommendations to them because of our conviction that, if they should be adopted, national security would be adequately protected and no reasonable citizen could feel that this was being achieved at the sacrifice of our basic principles of liberty and our sense of fairness.

Committee Report

COMMITTEE ON PROFESSIONAL ETHICS

OPINION NO. 819

Question: A lawyer has a real estate brokerage business. Under his lease his landlord prohibits him from affixing to the front of his store-office signs in any language other than English, and since he is unable to post a sign in Spanish welcoming Puerto Rican–born residents to take advantage of his federal and state income tax services in preparing their returns, he proposes to mail to the Puerto Rican–born population at large small notices that he would be happy to serve them in such work without announcing in such notices that he is an attorney.

Opinion: It would be unprofessional for the lawyer to distribute circulars or post notices in any language soliciting employment for the preparation of federal or state income tax returns. Even though it may be lawful for an accountant or other layman to "make out" income tax returns without involving the rendition of legal services or engaging in the unauthorized practice of law, when such services are performed by a lawyer they become inseparable from legal services. The solicitation by a lawyer of employment for the rendition of such services is therefore the solicitation of professional employment within the meaning of Canon 27.

October 29, 1956

OPINION NO. 820

Questions: 1. May an attorney admitted to practice before the New York State Bar, who has familiarity with the field of Labor Law, list himself in the classified section of the telephone directory as a Labor Relations Counselor if such listing makes no reference to the fact that the named counselor is also an attorney at law?

2. Is it permissible on the legal letterhead of an attorney to include the fact that such attorney is also a Labor Relations Counselor?

Opinion: It would be unprofessional for a lawyer to advertise to the public the availability of his services as a Labor Relations Counselor on his attorney's letterhead, or in telephone classified directories or otherwise, even without making reference to the fact that he is a lawyer. Though it may be lawful for a layman to render certain services in this field without engaging in the unauthorized practice of law, such services are so apt to involve legal problems at almost every stage that it would be difficult, if not impossible, for a lawyer to operate generally as such a counselor without practicing law.

The solicitation of such employment by a lawyer would therefore constitute a violation of Canon 27.

Furthermore, although this committee, jointly with the Committee on Professional Ethics of the New York County Lawyers' Association, has ruled that an attorney may properly send *to lawyers only* an announcement which includes an intention to specialize in a particular branch of the law, such announcement should not be sent to anyone who is not a lawyer unless the specialty be admiralty, patents, copyrights or trade-marks (New York City Opinion No. 686—New York County Opinion No. 375). See Canon 47. Since the legal letterhead goes to the public as well as to lawyers, reference to the specialty on the letterhead is likewise objectionable.

October 29, 1956

The Library

SIDNEY B. HILL, *Librarian*

RECENT PUBLICATIONS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 1954–1956

"That man's the true Conservative
Who lops the moulder'd branch away."
—ALFRED LORD TENNYSON
(1809–1892)

PRESIDENT

ALLEN T. KLOTS

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Annual Report of the President.
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EDWARD J. ENNIS, *Chairman*

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THEODORE E. WOLCOTT, *Chairman*

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COMMITTEE ON THE CITY COURT

CHARLES J. COLGAN, *Chairman*

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SUBCOMMITTEE ON INSPECTION AND DISCOVERY

STUART N. UPDIKE, *Chairman*

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COMMITTEE ON CRIMINAL COURTS, LAW AND PROCEDURE

ARNOLD BAUMAN, *Chairman*

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ROGER B. HUNTING, *Chairman*

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COMMITTEE ON GRIEVANCES

SAMUEL L. ROSENBERRY, *Chairman*

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JOHN V. DUNCAN, *Chairman*

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CHAUNCEY BELKNAP, *Chairman*

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I. ROBERT FEINBERG, *Chairman*, 1954–1956

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DAVID W. PECK, *Chairman*

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ARTHUR H. GOLDBERG, *Chairman*

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CHARLES J. COLGAN, *Chairman*

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CHESTER T. LANE, *Chairman*

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SECTION ON CORPORATE LAW DEPARTMENTS

E. NOBLES LOWE, *Chairman*

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GEORGE A. BROOKS, *Chairman*

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SAMUEL C. COLEMAN, *Chairman*

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